Supreme Court, U.S.
FILED
JUL 30 2003
OFFICE OF THE CLERK

No. 03-51

IN THE

Supreme Court of the United States

SEAN SILVEIRA, *et al.*,
Petitioners,

v.

BILL LOCKYER, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF WOMEN AGAINST GUN CONTROL AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI AND REVERSAL

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

9 pp

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All parties in this appeal have graciously consented to the filing of this brief which supports the position of Petitioners. These consents have been filed with the Clerk of the Supreme Court.

I. PURPOSE AND LOCATION OF THE *AMICUS CURIAE* WOMEN AGAINST GUN CONTROL [*]

Women Against Gun Control is a non-profit corporation in the State of Utah whose officers and directors volunteer their time to promote the right of ordinary people to keep and carry

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[*] Women Against Gun Control is in compliance with S.Ct. Rule 37(6). Counsel for Petitioners did not author this brief in whole or in part. The money to pay for its printing came from Women Against Gun Control.

arms for lawful purposes. Founded in 1994, it has thousands of members with branches in Utah, Missouri, Michigan, Nevada, Indiana, Washington, Arizona, Georgia, New Jersey, Colorado, Alaska, Canada, and Italy. At the time Women Against Gun Control was founded, many of the most outspoken proponents of gun control,[1] such as Sarah Brady,

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[1] "Gun control" as envisioned by groups such as The Brady Campaign To Prevent Handgun Violence, formerly known as Handgun Control, Inc. (HCI), is a "slice-at-a-time" process intended to culminate in gun *prohibition*.

Handgun Control, Inc. was originally known as the National Council To Control Handguns. Its founder, Nelson T. "Pete" Shields, III, was quite candid about his then-fledgling group's ultimate agenda when, in 1976, he stated to *The New Yorker*:

> "We're going to have to take one step at a time, and the first step is necessarily—given the political realities—going to be very modest. Of course, it's true that politicians will then go home and say, 'This is a great law. The problem is solved.' And it's also true that such statements will tend to defuse the gun-control issue for a time. So then we'll have to start working again to strengthen that law, and then again to strengthen the next law, and maybe again and again. Right now, though, we'd be satisfied not with half a loaf but with a slice. Our ultimate goal—total control of handguns in the United States—is going to take time. My estimate is from seven to ten years. The first problem is to slow down the increasing number of handguns being produced and sold in this country. The second problem is to get all handguns registered. And the final problem is to make the possession of all handguns and all handgun ammunition—except for the military, policemen, licensed security guards, licensed sporting clubs, and licensed gun collectors—totally illegal." "A Reporter At Large—Handguns", *The New Yorker*, July 26, 1976, p. 53, 57-58.

The "gun control" envisioned by Mr. Shields would eventually preclude possession of a handgun by a private citizen for self-defense.

Almost twenty years later syndicated columnist Charles Krauthammer wrote in the *Washington Post*:

> Ultimately, a civilized society must disarm its citizenry if it is to have a modicum of domestic tranquility of the kind enjoyed by

were women. In addition to grass-roots lobbying, Women Against Gun Control, through numerous electronic and print media contacts,[2] has sought to dispel any public perception that most women are in favor of more restrictive gun laws.

II. SPECIFIC INTEREST OF WOMEN AGAINST GUN CONTROL IN THE COURT'S GRANTING CERTIORARI

Legislators and judges cannot alter biology. Women, despite all of the protections afforded them by statute and case law, and the resultant progress they have made in education and employment remain the physically *weaker* sex. In addition to being generally larger and stronger than women, men, as a group, are also far more prone to commit violent crimes.[3] To the extent that they lack the physical strength and endurance of men, women have a special interest

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sister democracies such as Canada and Britain. Given the frontier history and individualist ideology of the United States, however, this will not come easily. It certainly cannot be done radically. It will probably take one, maybe two generations. It might be 50 years before the United States gets to where Britain is today. Passing a law like the assault weapons ban is a symbolic—purely symbolic—move in that direction. Its only real justification is not to reduce crime but to desensitize the public to the regulation of weapons in preparation for their ultimate confiscation. "Disarm The Citizenry", *Washington Post*, April 5, 1996, p. A19.

[2] Since its founding, officers, directors, or members of Women Against Gun Control have been the subject of hundreds of reports, articles, or interviews, particularly in the Salt Lake City area.

[3] In 2000, the breakdown of arrests for various violent crimes according to sex was as follows: Murder and Non-Negligent Manslaughter, male 7,783 (89.36%), female 926 (10.64%); Forcible Rape, male 17,712 (98.87 %), female 202 (1.13%); Robbery, male 65,026 (89.91%), female 7,294 (10.09%); Aggravated Assault, male 252,921 (79.87%), female 63,709 (20.13%). *Crime In The United States, Uniform Crime Reports*, Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C., 2001, p. 233.

in acquiring and becoming proficient with firearms for use in self-defense.

Any law that impairs access to firearms for self-defense will have a disparate impact on women.[4] The social and economic opportunities that have opened up to women in recent decades are of little consequence to members of their sex who are the subjects of autopsies, on life support, or waiting for an emergency room nurse to retrieve a rape test kit.

"The right to defend oneself against deadly attack is fundamental." *United States v. Panter*, 688 F2d 268, 271 (5th Cir. 1982). *See United States v. Gomez*, 81 F.3d 846, 850 n.7 (9th Cir. 1996). The Second Amendment guarantees the right to a means of self-defense. Lund, *The Second Amendment, Political Liberty, and the Right to Self-Preservation*, 39 Ala. L.Rev. 103, 117-120, 130 (1987). Women Against Gun Control have a specific interest in this case in that womens' abilities to exercise their fundamental right of self-preservation is jeopardized if the right guaranteed by the Second Amendment [5] is not considered to be an individual right, or as not being applicable to the States. The interests of women in having ready access to firearms for self-defense is underscored by the fact that local governments have no

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[4] In 2000, there were 260,950 reported rapes or sexual assaults, of which 246,180 (94.33%) involved female victims. *Criminal Victimization 2000*, Bureau of Justice Statistics, U.S. Department of Justice, Washington, D.C., June, 2001, p. 14. 84% did not involve a weapon. *Id.* Thus, in 2000 there were approximately 200,000+ instances where a woman's access to a firearm might have prevented her from becoming a victim. When no weapon is present the assailant's (or assailants') superior strength is a factor that permits an offense to take place. In such circumstances a firearm could give a woman a means of countering her attacker's physical advantage. Even an armed rapist would have something to fear when staring down the barrel of gun.

[5] "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

obligation to protect any particular individual. *See DeShaney v. Winnebago County Department Of Social Services*, 489 U.S. 189, 196-97, 109 S.Ct. 998, 1003, 103 L.Ed.2d 249, 258-59 (1989), *South v. Maryland*, 59 U.S. 396, 15 L.Ed. 433 (1856). Assuming that a woman can get to a phone and place a "911" call, she must be prepared to *defend herself* until an officer arrives on the scene.

Given that the police have no obligation to protect any particular individual, the *individual* right of self-defense is meaningless unless one has access to a practical and effective means of deterring or defending against an assault. Firearms give meaning to that right where people, due to size, age, or infirmity, lack the physical strength to fight off those who would harm them. As a brochure for the *Colt's Patent Firearms Mfg. Co.* put it, "Have no fear of any man no matter what his size. When danger threatens call on me, and I shall equalize." [6]

Women Against Gun Control asks this Court to give due regard to the interests of women in "equalizing" things, be it in the workplace or a dark parking lot.

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[6] One Women Against Gun Control T-Shirt reads, "The Second Amendment IS the Equal Rights Amendment."

CONCLUSION

For the reasons set forth above, Women Against Gun Control prays that this Court grant the petition for writ of certiorari, reverse the judgment of the United States Court of Appeals in *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2003), and remand the case.

Respectfully submitted,

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